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PATENT DEPARTMENT  
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In re Application of  
FLEISCHER

Application No.: 10/585,809

PCT No.: PCT/EP2005/000745

Int. Filing Date: 26 January 2005

Priority Date: 26 January 2004

Attorney Docket No.: P06,0247

For: METHOD, DEVICE, COMPUTER  
SYSTEM AND COMPUTER PROGRAM  
PRODUCT FOR CONTROLLING A  
MATERIAL FLOW

DECISION ON PETITION

UNDER

37 CFR 1.497(d)

This decision is in response to applicant's submission filed in the United States Patent and Trademark Office (USPTO) on 17 September 2007, which has properly been treated as a petition under 37 CFR 1.497(d).

#### **BACKGROUND**

On 26 January 2005, applicant filed international application PCT/EP2005/000745, which designated the United States and claimed a priority date of 26 January 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 29 September 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 26 July 2006.

On 13 July 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 02 April 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage were required.

On 13 April 2007, applicant filed the surcharge under 37 CFR 1.492(h) and a declaration of inventors identifying and executed by five inventors.

On 27 August 2007, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that four of the five inventors listed on the declaration are not listed in the international application.

On 17 September 2007, applicants filed the instant submission which has properly been treated as a petition under 37 CFR 1.497(d). The petition was accompanied by statements by Uve Czempik, Wolfram Keil, Christian Reckzeh, and Markus Wimmer, a consent of assignee statement, and the surcharge under 37 CFR 1.492(h).

### **DISCUSSION**

37 CFR 1.497(d), provides:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92<sup>bis</sup> subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

- (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in Sec. 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see Sec. 3.73(b) of this chapter); and
- (4) Any new oath or declaration required by paragraph (f) of this section.

Applicants have satisfied items (1) and (2). Item (4) is not required.

Item (3) has not been satisfied. Although a consent of assignee statement has been provided, no showing under 3.73(b) has been provided. See MPEP § 324, item II.

### **CONCLUSION**

The request under 37 CFR 1.497(d) is **DISMISSED** without prejudice for the reasons set forth above.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

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Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

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